

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: Peter Zatloukal	Examiner	: Ali, Farhad
Application No.	: 10/531,162	Art Unit	: 2446
Filed	: April 12, 2005	Docket No.:	120083-141790
For	: A MOBILE DIGITAL COMMUNICATION/COMP UTING DEVICE HAVING A CONTENT SENSITIVE AUDIO SYSTEM	Date	: June 16, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents:

This paper is being filed to submit arguments in support of the Pre-Appeal Brief Request for Review (form PTO/SB/33) included herewith. A Notice of Appeal along with the requisite fee are also being submitted herewith. These documents are being submitted in response to the Final Office Action dated March 17, 2010 (“the Final Office Action”) and the Advisory Action dated June 3, 2010 (“the Advisory Action”).

It is kindly requested that the legal and factual basis of the final rejections of pending claims 1-3, 5-14, 16-20, 29-31, and 33 be reviewed in light of the remarks/arguments that follow.

Arguments

The Final Office Action rejected claims 1-3, 5-14, 16-20, 29-31, and 33 under 35 U.S.C. § 102(e) as allegedly being anticipated by Donaldson (USPN 7,272,232). Such rejections were maintained in the Advisory Action.

A novelty rejection under 35 U.S.C. § 102 requires that the cited reference must teach all elements of the rejected claim. It was asserted in the Final Office Action that the cited reference Donaldson teaches all the recitations of the rejected claims. However, as explained below, the

Examiner fails to identify any portion from the cited reference Donaldson that teaches one or more recitations in the rejected claims. Therefore, the rejections of claims 1-3, 5-14, 16-20, 29-31, and 33 are clearly erroneous.

Independent claim 1 is representative and recites, inter alia, the following:

“incrementally increasing, by the mobile client device, the second audio volume level from the initial non-intrusive lower volume level to a discernable volume level higher than the first audio volume level, said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment,

second, determining that the user has not responded to the second audio signal, and

third, increasing the second audio volume level by a second predetermined increment.” (emphasis ours)

The Examiner asserted on pages 4 and 19 of the Final Office Action that col. 5 lines 50-54 disclose the above features with emphasis. In the Advisory Action, the Examiner further cited col.6 lines 35-38 of Donaldson as disclosing the above recitation with emphasis.

Donaldson is directed to a system and method for prioritizing multiple audio sources and balancing them in a single combined output in a handheld device. Col. 5 lines 50-54 and col.6 lines 35-38 of Donaldson teach that in the handheld device, there may be prioritization rules to establish the gain applied to different sources, and in particular when the high priority source is active, the volume of the low priority source is reduced; when the high priority source becomes inactive, the volume of the low priority source is restored (as shown in figure 3 of Donaldson).

In the Advisory Action, the Examiner asserted that “the presence of a source constitutes a determination of the users response to the audio signal, as once a user responds to the signal it will become inactive.” Even if we assume *arguendo* and hypothetically, that such interpretation by the Examiner is appropriate (which Applicants do not agree), the above cited portions of Donaldson fail to teach “third, increasing the second audio volume level...” (which is the volume of the signal with high priority), which is an operation pursuant to “second, determining that the user has not responded to the second audio signal” as recited in claim 1. As stated above, col.6

lines 35-38 of Donaldson teaches that when the high priority signal becomes active, the volume of the low priority source is reduced instead of the volume of the high priority source being increased.

In col.6 lines 17-20 and lines 46-50 of Donaldson, it is disclosed that the high priority source may be raised or amplified in volume, combined with the low priority source, and then output. However, such a simple description of being raised or amplified in volume does not provide the clear and unequivocal teaching required by law for 102 rejections to anticipate the recited gradual increase process of the second audio volume in claim 1, including “*first*, increasing the second audio volume level by a first predetermined increment, *second*, determining that the user has not responded to the second audio signal, and *third*, increasing the second audio volume level by a second predetermined increment.”

Accordingly, it is submitted that Donaldson fails to teach all elements recited in claim 1. Hence, the rejection of claim 1 is clearly erroneous in law and fact.

Independent claims 10 and 29 include similar recitations to claim 1. Claims 2, 3, 5-9, 11-14, 16-20, 30, 31, and 33 depend from independent claim 1, 10 or 29, incorporating their recitations respectively. Therefore, due to at least similar reasons applied to claim 1, the rejections of claims 2, 3, 5-14, 16-20, 29-31, and 33 are also clearly erroneous in law and fact.

Conclusion

It is respectfully submitted that the legal and factual basis for the rejections are clearly erroneous. As such, a Notice of Allowance is kindly requested. The Director is authorized to charge any additional fees due by way of this response, or credit any overpayment, to our Deposit Account No. 500393.

Respectfully submitted,
Schwabe, Williamson & Wyatt

Date: June 16, 2010

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